

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

WENDY P.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN LUIS
OBISPO COUNTY,

Respondent;

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Real Party in Interest.

2d Civil No. B156432
(Super. Ct. No. JV38690)
(San Luis Obispo County)

Wendy P. petitions in propria persona for an extraordinary writ to set aside the trial court's order denying her reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26 for her daughter.¹ We deny the petition.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

FACTS

Tasha A. was born in August 1992. On October 29, 2001, the San Luis Obispo County Department of Social Services (DSS) took Tasha into protective custody. Thereafter, DSS filed a petition pursuant to section 300, subdivision (b).

The petition alleged that Tasha's mother, Wendy P., suffers from longstanding substance abuse problems. She has multiple arrests for alcohol related offenses, including child endangerment. Alcohol interferes with psychotropic medications prescribed to treat Wendy's serious emotional problems. Previous treatment programs and services have been ineffective.

The petition also alleged that Wendy's alcohol problems interfere with her ability to care for Tasha. On two occasions, Tasha has inadvertently ingested alcohol while in her mother's care. In addition, Wendy's boyfriend molested Tasha and Wendy did not report it for three weeks. Tasha has stated she is afraid to be in her mother's care.

A DSS detention report stated that since 1996 DSS had received over 20 referrals regarding Tasha's welfare, including referrals for general neglect and sexual abuse. On October 8 and 29, 2001, Tasha told authorities at her school that she did not want to go home to her mother. Tasha was sexually molested by her mother's boyfriend and exposed to repeated incidents of domestic violence against her mother. The report also detailed previous attempts at intervention, including two placements for Wendy in a residential treatment program. Wendy left the program prematurely both times.

DSS recommended that reunification services be denied. DSS alleged Wendy suffers from a mental disability that prevents her from utilizing reunification services. (§ 361.5, subd. (b)(2).) DSS also alleged that Wendy has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted treatment. (§ 361.5, former subd. (b)(12) now (b)(13).)

Two psychologists, Robert Weber, Ph.D., and Thomas Wylie, Ph.D., evaluated Wendy. Weber diagnosed Wendy as suffering from, among other conditions, alcohol dependence. He reported that Wendy's attempts at sobriety have been short lived, and that she has not come to terms with the dangerous situation she has created for Tasha.

Weber stated that although Wendy claims she has been sober for six or seven months, it does not appear she has actually abstained for more than thirty days. She has only recently begun to participate in any effective treatment. Weber opined that Wendy was unlikely to overcome her mental impairment within the 12-month period prescribed by statute. He recommended that reunification services not be provided.

Wylie diagnosed Wendy as suffering from alcohol dependence, depressive disorder and borderline intellectual functioning. He reported that Wendy does not verbalize or display an awareness of how fragile her recent recovery may be, nor the risks her behaviors have presented to Tasha. He concluded that Wendy has significant limitations in her ability to modify her behavior. He opined she does not have the ability to benefit from reunification services.

After the hearing, the trial court denied reunification services and ordered the matter set for a section 366.26 hearing.

DISCUSSION

Wendy claims she did not receive adequate notice of the hearing. But she was present at the hearing with her attorney. She neither objected on the ground she had not received adequate notice, nor did she request a continuance. Under the circumstances, her claim of lack of notice was waived. (See *In re B. G.* (1974) 11 Cal.3d 679, 689.) Moreover, the trial court found that notice of the hearing has been given as required by law. Wendy points to nothing in the record that contradicts the finding.

Wendy claims the trial court erred in refusing to order reunification services for her.

Section 361.5, subdivision (b)(2) states that reunification services need not be provided if the court finds by clear and convincing evidence "[t]hat the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services." Habitual use of alcohol is one such disability. (Fam. Code, § 7824, subd. (b)(1).)

Here, the trial court found that Wendy's habitual use of alcohol renders her incapable of utilizing reunification services. We must uphold that finding if it is supported by substantial evidence. (See *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

"In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. [Citation.] Where the trial court or jury has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though different inferences may also be reasonable. [Citation.] The trier of fact is not required to believe even uncontradicted testimony. [Citation.]" (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.)

Here the evidence showed that Wendy is a habitual abuser of alcohol. The evidence also shows that previous treatment programs have not been successful. Two psychologists opined that Wendy is unable to benefit from reunification services. The court's decision to deny reunification services is supported by substantial evidence.

Wendy's petition is denied.

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GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Sidney B. Findley, Temporary Judge*

Superior Court County of San Luis Obispo

Wendy P., in pro. per., for Petitioner.

No appearance for Respondent.

James B. Lindholm, Jr., County Counsel and Stacy Millich, Deputy County
Counsel for Real Party in Interest.

*(Pursuant to Cal. Const., art. VI, § 21.)